IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 21ST NOVEMBER 2007 / 30TH KARTHIKA 1929

Con.Case(C).No. 1334 of 2007(S)

AGAINST THE JUDGEMENT IN WPC.33372/2005 Dated 17/01/2007

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PETITIONER/PETITIONER:

SMT.A. KUNJAMMA,
HEADMISTRESS, ST. THOMAS HIGH SCHOOL,
PUNNACODE, POOYAPPALLY P.O., KOLLAM-691 537.

BY ADV. SRI.N.D.PREMACHANDRAN
SRI.D.AJITHKUMAR

RESPONDENTS/RESPONDENT NO.3:

SRI.O.KUNJUPILLA,
AGED AND FATHER'S NAME NOT KNOWN TO THE PETITIONER
DISTRICT EDUCATION OFFICER, KOTTARAKARA.

BY GOVERNMENT PLEADER SRI. M.P.SREEKRISHNAN.

THIS CONTEMPT OF COURT CASE (CIVIL) HAVING COME UP FOR ADMISSION ON 21/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.M.JOSEPH, J.

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Cont. Case (C) No.1334 of 2007

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Dated this the 21st day of November, 2007

JUDGMENT

Petitioner has approached this court alleging deliberate disobedience of the lawful direction issued by this court in Annexure A1 judgment. This court in Annexure A1 judgment had found that the petitioner is entitled to have Ext.P7 relinquishment approved by the Educational Officer. It is also found that she cannot be granted the benefit of appointment as Headmaster from 1.6.2003 as ordered in Ext.P1. Ext.P1 came to be quashed to the said extent. The Manager of the School was directed to pass order of appointment of the petitioner in the light of the findings entered by me in the judgment. Further there was a direction to the DEO, Kottarakkara, who is the respondent to pass appropriate orders in the light of the observations made by the court in the judgment in regard to the approval of Ext.P7 relinquishment given by the petitioner. It is the case of the learned counsel for the petitioner that in the course of the judgment, this court found that upon the retirement of Sri. Mathai on 31.5.2005, it is the

petitioner, who would be entitled to be appointed as Headmistress on 1.6.2005. Petitioner points out that by Annexure A4, the petitioner was appointed by the Manager as Headmistress with effect from 1.6.2005. By Annexure A8, however, the respondent, it is contended, in patent disregard of the judgment of this court, proceeded to find that the petitioner is entitled to be approved as Headmistress with effect from 1.6.2007 against the retirement vacancy of Smt.Rohini Mathen. Petitioner would point out that even though in the judgment this court found that the petitioner is entitled to be appointed as Headmistress with effect from 1.6.2005, Annexure A8 reflects contemptuous stand of the respondent as approval of the appointment of the petitioner is given only with effect from 1.6.2007.

2. If matter did not progress beyond Annexure A8, I would have been inclined to think that the respondents are to be proceeded against. But during the pendency of the proceedings Annexure R1(a) is produced by the respondent under an affidavit. In the affidavit dated 12.11.2007 it is stated that Annexure A8 was issued on the assumption

that since Smt. Rohini Mathen had continued as Headmistress till 31.5.2007 on the strength of the interim order of this court, the petitioner would not be entitled to approval for the period from 1.6.2005 to 31.5.2007. It is stated that it is an order issued as a result of a mistaken understanding of the issue and is sincerely regretted. Clarification was sought for from the Government for issuing orders approving the promotion of the petitioner notionally from 1.6.2005 onwards.

3. Learned counsel for the petitioner would contend that Ext.R1 (a) would make matters worse. According to him, when it is declared in Annexure A1 judgment that the petitioner is entitled to appointment as Headmistress with effect from 1.6.2005, now under Annexure R1(a) though approval is granted with effect from 1.6.2005, without any warrant in the judgment for doing so, the respondent has proceeded to add a rider that it would have notional effect and monetary benefits will be given with effect from the date on which the petitioner assumes charge, namely, 1.6.2007. He would submit that this amounts to

disobedience of the court's declaration. He would submit that when a court declares a particular position as against a public authority, it has the effect of a direction and the judgment containing the declaration has to be given effect to. There was no basis for adding the words 'notional', it is submitted. He would also submit that during the pendency of the writ petition, it was after modifying the interim order passed by the court that the fifth respondent was allowed to assume charge and in the interim order it is made clear that it is subject to the result of the writ petitioner and consequently when the writ petition is allowed holding that the petitioner is entitled to be appointed as Headmistress with effect from 1.6.2005, there is not basis to deny the benefit of the judgment with monetary benefits. Learned counsel would point out that by merely promoting the petitioner with effect from 1.6.2007, she does not gain anything and by the action of the respondent, the petitioner is being deprived of the fruits of the judgment. Learned Government Pleader points out that in fact Annexure A1 is carried in appeal by Smt. Rohini Mathen and the

appeal itself came to be disposed of by Annexure A3 judgment. It is pointed out by the learned Government Pleader that this is a case where the entire amount was received by Smt. Rohini Mathen, and she retired on 31.5.2007 and thereafter the petitioner came to be appointed on 1.6.2007.

I would therefore think that this is not a case where I should proceed with the contempt. The contempt alleged is against Annexure A8 order. Annexure A8 does not survive because of the passing of Annexure R1(a) order. In Annexure R1(a) order the petitioner has given approval with notional effect, with effect from 1.6.2005. I would think that this is not a case where, I should proceed in contempt with the matter in the light of Annexure R1(a) order passed. But I make it clear that it will be open to the petitioner to work out her remedies in law before the appropriate forum.

(K.M. JOSEPH, JUDGE)

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